United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

312

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22550

UNITED STATES OF AMERICA

v.

MELVIN W. COLLINS, APPELLANT

Appeal from the United States District Court

for the District of Columbia

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(Appointed by this Court)

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STATEMENT OF ISSUES

1. Could a reasonable mind have concluded beyond a reasonable doubt that the crimes of which Appellant was convicted (illegal sale, possession and concealment of narcotics) were not the product of mental illness in a case where the only testimony bearing upon this issue was that of a St. Elizabeth's Hospital psychiatrist who testified that, in his opinion, Appellant was suffering from drug addiction and, further, that in his opinion such drug addiction amounted to a mental illness?

2. Was it prejudicial error for the lower Court on one occasion before trial and on another occasion at trial to deny Appellant's motion for a mental examination, and to deny Appellant's motion for a new trial, in a case where a mental examination was ordered after trial and conviction and where, upon a lower Court hearing on mental competency, the only testimony adduced was that of a St. Elizabeth's Hospital psychiatrist who testified that in his opinion Appellant was suffering from long-standing drug addiction at the time of the commission of the crimes of which Appellant was convicted and that, in his further opinion, such addiction amounted to a mental illness?

This case has not previously been before this Court.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,550

UNITED STATES OF AMERICA

v.

MELVIN W. COLLINS, APPELLANT

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

REFERENCES TO RULINGS

January 26, 1968	Denial of Motion For Mental Examination; Record 11; Record 32a, page 17.
April 4, 1968	Denial of Motion For Mental Examination; Record 20; Record 35a, p. 130.
October 25, 1968	Denial of Motion For New Trial; R. 37, p. 42.
October 25, 1968	Sentence; Record 29.
November 1, 1968	Order (relating to mental examination); Record 32.

STATEMENT OF THE CASE

Appellant, Melvin W. Collins, was indicted on nine separate counts of violations of the narcotics laws (R.1). Counts one and two related to acts allegedly occurring on January 5, 1967, counts three, four and five related to acts allegedly occurring on February 6, 1967, counts six and seven related to acts allegedly occurring on February 16, 1967, and counts eight and nine related to acts allegedly occurring on March 2, 1967. A plea of not guilty was entered (R.3) and counsel (not present counsel) was appointed by the District Court to represent Appellant at trial (R.5). Counts one and two were dismissed prior to trial (R.17). After a trial without a jury, Appellant was convicted on April 4, 1968, on each of the remaining seven counts (R.20). He was sentenced on October 25, 1968, to imprisonment for ten years each on counts three, five, six and nine and five years each on counts four, seven and eight, all sentences to run concurrently (R.29).

Appellant noted an appeal and was permitted to proceed on appeal in forma pauperis. This Court appointed present counsel to represent Appellant on appeal.

Prior to trial, Appellant moved for a mental examination before Judge Waddy on January 26, 1968 (R32a), but the motion was denied (R.32a, p.17). Once again, during

the trial on April 4, 1968, Appellant moved for a mental examination before Judge Walsh but this motion was also denied (R.35a, p.130). At the close of the trial, on April 4, 1968, the Court found Appellant guilty as charged (R.35a, p.142). On June 7, 1968, the trial Court granted Appellant's motion for a mental examination and committed him to St. Elizabeth's Hospital (R.23). On October 7, 1968, a letter from St. Elizabeth's Hospital, dated October 3, 1968, was filed in the lower Court proceedings stating: "In our opinion Mr. Collins is without mental disease or defect and competent for trial * * *. The patient is without mental disorder under the existing laws in the District of Columbia; however, if his drug dependence were considered a mental disorder, it would be our opinion that the drug dependence does affect his mental and emotional processes and does substantially impair his behavior controls." (R.28)

On October 25, 1968, the trial Court held a hearing on mental competency, at which Dr. Daniel Duncan Pugh, staff psychiatrist at St. Elizabeth's Hospital, was the principal witness (R.37, pp. 4-40). At the conclusion of the hearing, the trial judge imposed the sentences herein-before set forth (R.37, p.45).

Dr. Pugh testified to the following facts (all

references are to R.37 unless otherwise noted):

According to the Hospital records, Appellant has been a heavy user of narcotics (p.5), principally heroin, since 1952, averaging about 40 "caps" per day (p.6). In the Doctor's opinion, Appellant has been addicted to drugs for some years (p.6). In his further opinion, based on Appellant's medical history, Appellant is suffering from a chronic mental illness (p.3). Drug addiction affects the addict's mental processes, particularly as it concerns his state of alertness when under the effect of heroin. It also affects his emotional processes; under the influence he is likely to be inappropriately cheerful and euphoric; in withdrawal, he is likely to be inappropriately depressed and despondent (pp.10-11). In his opinion, there is objective evidence of impaired behavior controls in narcotics addicts, specifically with regard to whether they will use narcotics or not and what they will do in order to keep using narcotics. The judgment of addicts is not as good as the judgment of non-addicts (pp.11-12). In the Doctor's opinion, Appellant's drug dependency does affect his mental and emotional processes and does substantially impair his behavior controls (pp.11, 12, 26, 35). The Doctor further noted that no sample instructions were sent to St. Elizabeth's Hospital with the Order for the mental

examination pursuant this Court's ruling in Washington v. United States, 129 U.S.App.D.C. 29, 390 F.2d 444 (1967) (R.13). Although the Doctor believed that Appellant was competent to stand trial and for sentencing (pp.15,16), he noted that Appellant apparently was confused in thinking that the charges of selling drugs had been dropped and that he had been found guilty only on charges of illegal possession of narcotics (pp.27, 28, 30, 31, 32). Dr. Pugh stated that in his opinion narcotics addiction is a psychiatric illness (p.22), although he admitted that the doctors at St. Elizabeth's Hospital are of a divided opinion on this point (p.23). He explained the apparent inconsistency in the St. Elizabeth's Hospital report by stating that he was under the impression that the law does not consider drug dependency to be a mental illness (p.23).

At the close of the Doctor's testimony, Appellant's counsel moved for a new trial on the basis of the Hospital report and Dr. Pugh's testimony (p.42). This motion was denied (p.42) and sentence was imposed upon Appellant (p.45), who requested that he not be sentenced under Title 2 and sent to Lexington because he was afraid that it would prejudice his right to appeal (p.43).

It should further be noted that when defense counsel, in cross-examining Officer Fairfax, the prosecution's

principal witness, asked whether the Officer knew whether Appellant was addicted, objection to the question was sustained, apparently on the theory that addiction by itself is insufficient to raise the defense of insanity (R.35a, p.55).

At the trial and at the mental examination hearing, Appellant testified that he has used narcotics since 1951, using as many as 30 or 40 capsules per day (R.35a, pp.117, 125; R.37, P.44) and that he was using this number each day in the spring of 1967 (R.35a, p.117) when the alleged offenses took place. He received treatment for addiction on three occasions in the District of Columbia Jail, on January 5, March 2 and October 6, all in 1967 (R.35a, p.118). He opposed the motions for mental examinations because he thought it would be prejudicial to his defense (R.35a, p.119). He did not recall his whereabouts on February 6, 1967, or February 16, 1967 (R.35a, pp.115, 116).

A R G U M E N T

I

The trial Court should have found Appellant not guilty by reason of insanity on the basis of the evidence adduced at the post-trial hearing.

Based on the St. Elizabeth's Hospital report referred to and quoted in the Statement of the Case of this Brief, and on the testimony of Dr. Pugh at the post-conviction hearing, it appears that the sole evidence in this case bearing on the issue of insanity is to the effect that (1) Appellant's drug dependence (existing as it did for some fifteen years and involving the use by Appellant of an average of 30 to 40 "caps" of heroin each day) amounted to a chronic mental illness which (2) affected his mental and emotional processes and substantially impaired his behavior controls. There can be no doubt that the introduction of this evidence, even after conviction (but before sentencing), was sufficient to place upon the Government the burden of establishing sanity beyond a reasonable doubt. Adams v. U.S., ___U.S.App.D.C. ___, ___ F.2d, 95 Wash. Law Rep., No. 105, p. 925 (decided by this Court on May 8, 1969); Isaac v. U.S., 109 U.S.App.D.C. 34, 284 F.2d 168 (1960). The issue, stated another way, is whether the Government, after the introduction of this evidence, "met its burden

of proving beyond a reasonable doubt either (1) that the Appellant has no mental disease or (2) if existence of a mental disease is shown that the . . . (alleged crime) was not a product of that disease." Frigillana v. U.S., 113 U.S.App.D.C. 323, 330, 307 F.2d 665, 666 (1962). The Government did not meet the burden in this case and the trial Court should have vacated its judgment of conviction and entered a judgment of not guilty by reason of insanity. A reasonable mind contemplating all the evidence adduced could not have concluded beyond a reasonable doubt that the crimes were not the product of mental illness.

A plea of "not guilty," such as was entered here encompasses the defense of insanity. U.S. v. Womack, 211 F.Supp. 578 (U.S.D.C.D.C. 1962); U.S. v. Fore, 38 F.Supp. 140 (U.S.D.C.S.D.Cal. 1941). Rule 11, F.R.Crim.Proc.

In McDonald v. U.S., 114 U.S.App.D.C. 120, 312 F.2d 847 (1962), this Court sitting en banc spelled out and elaborated the doctrine that a mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls. It is true that this Court refused, in Heard v. U.S., 121 U.S.App.D.C. 37, 340 F.2d 43 (1965), to hold that a "mere showing" of narcotics addiction, without more, does not constitute

"some evidence" of mental disease or insanity. However, in Green v. U.S., 127 U.S.App.D.C. 272, 383 F.2d 199 (1967), this Court's opinion made it clear that there "may well be some cases where prolonged and extensive use of narcotics has substantially impaired the capacity to control behavior, and a 'mental disease' within our McDonald standards may apply. * * * Undisputed, such evidence might compel a verdict of not guilty by reason of insanity." 127 U.S.App.D.C. at p.274. It is Appellant's position that this is such a case.

While the testimony of Dr. Pugh indicates that there exists some confusion among psychiatrists in their understanding of the legal doctrine and rules applicable to cases such as this, probably arising from the statement hereinbefore quoted from Heard v. U.S., supra, there was no doubt in his mind that from a psychiatric point of view the Appellant was suffering from a mental disease. There being no evidence to the contrary, this case is distinguishable from Adams, supra, where only two of the three expert witnesses supported the defendant's position. Here, the Government simply failed to carry its burden to prove sanity beyond a reasonable doubt. See also Jones v. U.S., 109 U.S.App.D.C. 111, 234 F.2d 245 (1960); Hopkins v. U.S., 107 U.S.App.D.C. 126, 275 F.2d 155 (1959); Satter-

White v. U.S., 105 U.S.App.D.C. 393, 267 F.2d 675 (1959); and Williams v. U.S., 102 U.S.App.D.C. 51, 250 F.2d 19 (1957).

It would appear that any lack of additional details by Dr. Pugh in describing the symptoms and conditions surrounding Appellant's mental condition is primarily due to the failure of the trial Court to carry out the procedures set forth by this Court in Washington v. U.S., 129 U.S.App.D.C. 29, 390 F.2d 444 (1967), namely that of sending the explanatory instruction to the psychiatrists which is set out in the Appendix to that opinion. Dr. Pugh testified that he had never seen a copy of any such instruction.

II

District Court's failure to grant pre-trial motions for mental examination deprived Appellant of insanity defense.

The refusal of the Court below (on one occasion before trial and on another occasion at trial) to grant motions for a mental examination deprived Appellant of the opportunity to develop and present any defense of insanity prior to his conviction. Indeed, when a mental examination was ordered by the trial Court after conviction, it was followed by a trial Court finding that Appellant was mentally competent to stand trial and sentencing. The Court Order of November 1, 1963, did not even touch on the

question of the defense of insanity, although much of the testimony of Dr. Pugh and part of the St. Elizabeth's Hospital report related to this defense and indicated that Appellant would have been in a position to raise the defense had the examination been made before trial.

A motion for a new trial was timely made by defense counsel, at the conclusion of the trial Court hearing on mental competency, based on the testimony of Dr. Pugh and the St. Elizabeth's Hospital report. Clearly this motion should have been granted.

CONCLUSION

Appellant submits that his conviction on counts three through nine, inclusive, of the indictment should be reversed and that a judgment of acquittal should be entered as to such counts. In the alternative, Appellant submits that his aforesaid conviction should be reversed and that a new trial should be ordered as to all counts.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Appellant has been hand-delivered to the attorney for Appellee: The United States Attorney, at the United States Courthouse, Constitution Avenue and John Marshall Place, Washington, D. C., this 7th day of July, 1969.

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